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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

ROSE, SHEP K

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 01/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/489310

Applicant(s)

STEPHENSON

Examiner

SKOP 2056

Group Art Unit

1614

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on NOV 20 2002 RCE and PRELIMINARY AMENDMENT/REMARKS
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 155 7215 17 & 31 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 155 7215 17 & 31 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit: 1614

This RCE to the same invention, as originally presented elected and prosecuted and examined, is generic to sodium hexametaphosphate species of polyphosphate

- ✓ (n=21) in elected fruit juice beverages with carbohydrate sweeteners: high ^{fructose} function corn
✓ ^{SYRUP} syrup, or sugar) (See Remarks: Sept. 26, 2001).

The November 20, 2002 RCE and Preliminary Response Remarks have been entered and considered.

Claims 11 to 15 and 17 to 20, 22 to Kits of known acidic beverages, provided with "information" and 23, to 31 to methods of orally ingestion, these beverages are presented.

Kit claims 11 to 15 and 17 to 20 and 22 recite and require (B) "information that the use of the beverage composition provides treatment against dental erosion", with (A) acidic beverages, pH less than about 3, pH from about 2 to about 4.5 or about 2.7 to about 3.5 (claim 12) (claim 18) with a sweetener (claims 13 and 19), which, as background information, or as admitted prior art are set forth by applicants' in the specification, as well as in the prior art, as known to cause tooth erosion, said acidic tooth erosion causing beverages, further containing sodium hexametaphosphate (or other species of sodium or potassium polyphosphate) encompassed by the generic formula recited in claims 11 and 23.

Method claims 23 to 31 "track" "KIT" composition claims 11 to 15 and 17 to 20 with respect to the sweetener component and acidic pH ranges and call for the step of "orally administering" these acidic beverages (oral ingestion being the only known

Art Unit: 1614

means of "administering" beverages (i.e. "swallowing these drinks"), for the intended purpose stated in their preamble" to treat dental erosion".

The remarks do note that the cited prior art relied upon does describe such polyphosphate salts in such low pH beverages.

A telephone interview Friday May 25, 2001 between the undersigned USPTO Examiner and applicants' counsel, Kelly McDaw-Dunham, clarified the page 8 election, with traverse, of one ultimate disclosed species of (B) beverages containing fruit juice and (c) carbohydrate sweeteners, since both are generic to plural species. All fruit juice species and all carbohydrate sweeteners are considered to be obvious variants of each other, and, accordingly, are not to be regarded as patentably distinct species.

The election, without traverse, is of:

- (A) sodium hexametaphosphate, $n=21$; (as in Examples 3 and 4);
- (B) beverages containing fruit juice; (as in Examples 3 and 4);
- (C) carbohydrate sweeteners, as high fructose corn syrup (Example 3) , or sugar (Example 4);
- (D) substantially free of calcium and fluoride, (both known to reduce tooth erosion in beverages) as required by the claims as presently amended.

The Examiner regards claim-encompassed polyphosphates and elected sodium hexametaphosphate ($n=21$) as well-known commercially available source compounds to yield phosphate ion in water, and the tooth erosion benefit of the sodium phosphate salt monosodium dihydrogen phosphate, "MDP", NaH_2PO_4 discovered by McDonald et al

Art Unit: 1614

and Muhler to reduce tooth erosion, to be due to the expected release of phosphate ion upon aqueous dissolution of the phosphate salt.

Whether or not the selection of sodium hexametaphosphate polyphosphate would be immediately envisioned for the same tooth erosion benefit, of phosphate ions, or whether or not one skilled in the art would have motivation to substitute sodium or potassium polyphosphates for the tooth erosion benefiting monosodium dihydrogen phosphate, based on expert knowledge that both are well known sources of phosphate ion requires a Rule 132 Declaration of an expert (i.e. by applicants or colleagues). Counsel's remarks on 35 U.S.C. 103 as set forth on pages 3 and 4 of the preliminary remarks are not considered herein to be an expert's opinion.

Applicants are depending on (b) "information" that the use of the beverage composition provides treatment against dental erosion" for patentability of composition or "KIT" claims 11 to 15, 17 to 20 and 22. The "information" can be provided by media advertising, or on a package label on the acidic beverage, the label containing the printed matter Information.

Prior to setting forth the Office Action, for clarity of prosecution, the following is noted about printed matter:

The printed matter on a label or package insert does not lend patentable weight as a limitation of the claimed product, composition, or article of manufacture, absent a functional relationship between the label or package insert and the product, composition, or article of manufacture.

Art Unit: 1614

See In re Haller 73 USPQ 403 (CCPA 1947), where it is held that application of printed matter to old article cannot render the article patentable. In the opinion text of In re Haller, it is stated that: Whether the statement of intended use appears merely in the claim or in a label on the product is immaterial so far as the question of patentability is concerned... in accordance with the patent statutes, an article or composition of matter, in order to patentable, must not only be useful and involve invention, but must also be new. If there is no novelty in an article or composition itself, then a patent cannot be properly granted on the article or composition, regardless of the use for which it is intended. The difficulty is not that there can never be invention in discovering a new process involving the use of an old article, but that the statutes make no provision for patenting of an article or composition which is not, in and of itself, new.

Also see In re Venezia 189 USPQ 49 (CCPA 1976), where kits are drawn to the structural attributes of interrelated component parts and not to activities that may or may not occur. Further, In re Miller 164 USPQ 46 (CCPA 1969) and In re Gulak (CA FC) USPQ 401 relate to a mathematical device and to a measuring cup respectively. In each of these cases, the printed matter is considered a patentable distinction because the function of the device depends upon the printed matter itself, which is a part of the substrate; without the printed indicia or numbers, the substrates lose their function. Such is not the case with the instantly claimed articles. The KIT'S claimed articles remain fully functional absent the labeling or printed instructions for use.

Art Unit: 1614

It is further noted that the written material in the instructions is not considered to be within the statutory classes and does not carry patentable weight. See MPEP 2111.03:

Thus the instructions for use included in, or labeled on, a kit or article manufacture constitute an "intended use" for that kit or article of manufacture. Intended use does not impart patentable weight to a product. See MPEP 2111.03: Intended use recitations and other types of functional language cannot be entirely disregarded. However, in apparatus, article, and composition claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to prior art. In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); In re Otto, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963).

In the instant case, the claims are drawn to an old composition acidic beverage article of manufacture, which further comprises information in printed labeling. The intended use which is recited on the label or package insert lacks a function relationship because the insert or label does not physically or chemically affect the chemical nature within the article of manufacture, and furthermore, the can still be used by the skilled artisan for other purposes. Therefore the old article or old composition, the known acidic beverage with sodium hexametaphosphate (elected polyphosphate species), old article or composition which are comprised within the article of manufacture are

Art Unit: 1614

unpatentable over the prior art, because they function equally effectively with or without the labeling and accordingly no functional relationship exists between the information's for use and the composition.

Thus the claims are addressed as being drawn to an article of manufacture comprising an old composition and a package insert, the information on the insert bearing no patentable weight with regard to double patenting, 102, and 103 rejections.

The undersigned USPTO Examiner has cited prior art describing the elected polyphosphate species sodium hexametaphosphate in elected beverage species: sweetened orange and other fruit juices and in other acidic low pH beverages, in references that are silent on their tendency to cause tooth erosion, or to this benefit of the polyphosphate, and regards the novel difference to unpatentable: "KITS" (information on dental erosion) on In re Haller, 73 USPQ 403 whose facts have been distinguished from the facts based upon In re Miller, 164 USPQ 46, and In re Gerlick, 217 USPQ 401, and can distinguish both cases as reacting functional structural elements claimed, more that "information", etc. "KITS" of old compositions whose patentable novelty depends on printed information on a new use are involved.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

Art Unit: 1614

by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 11 to 15, 17 to 20, 22 to 31 stand and are rejected under 35

U.S.C. 102(a)(b) and/or (E) as being anticipated by the elected sodium hexametaphosphate species of condensed phosphate or polyphosphate salt supplemented in encompassed species of low pH beverages of the U.S. patents cited on the PTO-892, namely the commonly assigned Proctor & Gamble patent to:

Calderas (sodium hexametaphosphate, same as herein), Smith et al., Montezinos (I-II), Ekanayake et al. (same), McKenna et al., Tung et al., Cirigliano et al. (I-II), Sokolik et al., and Zablocki et al. each describing encompassed species sweetened low pH acidic fruit juice (or other) beverages having a pH less than about 5, containing sodium hexametaphosphate, (same as herein), or other encompassed species of sodium or potassium, condensed phosphate or polyphosphate salts, Calderas, for example employing 900 to 3000 parts per million polyphosphate with sodium hexametaphosphate, (same as applicant herein) in Examples 1-4), as the encompassed polyphosphate, in a non-carbonated acidic beverage having a pH of between 2.5 and 4.5, as see column 4 lines 7-32 in fruit juices at column 7 lines 39-68, and tea at column 8 lines 12-28, with encompassed species of sweeteners at column 8 lines 30-68, also explicitly teaching avoiding calcium as well as iron and magnesium fortification since these polyvalent cations combine to and inactivate the polyphosphate component of the non-carbonated beverages, as see column 9 lines 27-30, as well as:

Smith et al. (Proctor & Gamble), similar to Calderas (Proctor & Gamble), include

Art Unit: 1614

300 ppm to 3000 ppm of an encompassed polyphosphate having an average chain length of about 17 to about 60, an encompassed species of a non-carbonated beverage having a pH of between 2.5 and 4.5.

The prior art polyphosphate supplemented acid beverages meet the claim recited and required oral administration step of the method claims 22 to 31 inherently drink them, and composition claims 11 to 15, 17 to 20 do not become patentable "KITS" by being labeled with information to the effect that since polyphosphate may prevent tooth caries, as see ~~and~~ Shibata et al. (1982)), that they may reduce their tooth erosion potential of the acid low pH beverages, a property described by Lussi et al., (1995).

Applicant's attention is directed to legal decisions, binding on USPTO patent examiners, on a vital issue of "new use" of known compositions.

Ex parte Novitski, 26 USPQ 2d 1389 (January 22, 1993), is a decision of the USPTO Board of Appeals, holding to be inherent and not patentable, inoculating healthy plants with a known plant inoculants, heretofore employed in the prior art to protect them against phytopathogenic fungi. Novitski discovered that the known plant inoculant would also protect them against root dwelling plant pathogenic nematodes, a discovery neither known nor appreciated. Nevertheless, the step of inoculating plants with the same inoculant necessarily and inherently protects them against nematodes.

Atlas Powder versus Ireco, 51 USPQ 2d 1943, (Fed. Cir. – 1999), holds that the failure of those skilled in the art to contemporaneously recognize an inherent property, function, or ingredient of a prior art reference does not precluding a finding of anticipation. Whether of not an element is inherent in the prior art, is a fact question.

Art Unit: 1614

Inherency is not necessarily coterminous with knowledge of those of ordinary skill in the art, who not recognize the inherent characteristics or functioning of the prior art.

However, the discovery of a previously unappreciated property of a prior art composition does not render the old composition patentably new to the discoverer. The fact that the prior art did not recognize the inherent function. This lack of contemporary understanding did not defeat the showing of inherency. The "KITS" are not patentably distinct by virtue of (B) information, as noted above.

It is argued on page 2 of the preliminary remarks that it was believed that the restriction requirement had been withdrawn and the election become moot solely because the method claims 23 to 31 had been added by entered amendment such is not the case, the method claims are considered to be the method of use of the composition in the elected KITS, and that because the method claims 23 to 31 are "methods for treating dental erosion" they are not inherent in the prior art if the prior art is silent on tooth erosion benefit of polyphosphate in acidic beverage.

Atlas Powder Co. C. IRECO, 51 USPQ2d 1943 (Fed. Cir. 1999)

"Artisans of ordinary skill may not recognize the inherent characteristics or functioning of the prior art ... However, the discovery of a previously unappreciated property of a prior art composition patentably new to the discover. "The Court further held that "this same reasoning holds true when it is not a property but an ingredient which is inherently contained in the prior art".

Mehl/Biophile International Corp. Milgraum, 52 USPQ2d 1303 (Fed. Cir. 1999)

Thus viewed as a whole, the Polla disclosure shows that the "natural result flowing from the operation as taught would result in alignment of the laser light over the hair follicle, as claimed." This was true even though Polla did not mention the goal of hair removal. Therefore, the Court held that the '192 patent was invalid as anticipated.

Where the Patent Office has reason to believe that a functional limitation asserted to be critical for establishing novelty in the claimed subject matter may be an inherent characteristic of the prior art, it has the authority to require the applicant to prove that the subject matter shown in the prior art does not possess the characteristics relied on. In re Schreiber, 44 USPQ2d 1429 (Fed. Cir. 1997).

The step of orally administering an acidic beverage means drinking it, doesn't it?

Products of identical chemical composition cannot have mutually exclusive properties. A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. In re Spada 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.01.

The argument presented on page 2 of the preliminary remarks with respect to methods for treating dental erosion in the preamble of method claims 23 to 31 ignores the plain fact that the step of these methods "orally administering" is completely silent and incomplete to a subject whose teeth are eroded? And in need thereof? Is no more than the only way to use acidic beverages with polyphosphate is to drink them, to swallow them, Is there more than this step? What?

Art Unit: 1614

INHERENCY OF METHODS. Ex parte Novitski 26 USPQ 1389 (BPAI 1993)

Powder Co. V. IRECO, 51 USPQ2d 1943 (Fed. Cir. 1999)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 11 to 15, 17 to 20, 22 to 31 stand or are rejected under 35 U.S.C. 103(a) as being unpatentable over the foregoing sodium hexametaphosphate added acidic pH fruit juice beverages described by each of the foregoing: Calderas, or Smith et al, (details as noted above) none of which describe the information component or even the reduction of tooth erosion benefit imparted to the acidic pH fruit juice benefit by virtue of the sodium hexametaphosphate, taken in further view of anyone of each of Shibata et al (1982) or McGaughey et al (1977) or Harris et al (1967) and one of each of Muhler (1970) (as abstracted) and McDonald et al. (1973) (Details as noted above), each teaching a tooth erosion benefit imparted by phosphate ions by the addition of a sodium

Art Unit: 1614

or potassium phosphate salts source of phosphate ion to such a low pH acid beverage to reduce their tooth eroding potential, the selection of potassium polyphosphates or condensed phosphate salts to thereby impart polyphosphate ion as well as the selection of these encompassed low pH acid sweetened fruit juice or other beverage species, to practice this tooth erosion reducing benefit would be prima facie obvious as apt sources for phosphate ion, if not immediately envisioned, In re Schaumann et al ., 197 USPQ 5.

The remarks of counsel with respect to the rejections under 35 USC 103, while they mention Muhler and McDonald et al on pages 3, 4 and 5 fail to come to grips with the thrust of the Examiner's rejection, and polyphosphates are well known apt sources of phosphate ion, and that it is the phosphate ion imparted to acidic beverages by Muhler and McDonald et al, by including therein monosodium dihydrogen phosphate, ("MDP" or $\text{Na H}_2 \text{PO}_4$) that they discovered to impart a dental erosion reducing benefit.

Counsel's remarks have been considered, but are not seen as a substitute for a Rule 132 Declaration of an expert, when technical counsel is arguing facts. Attorney argument is not evidence, unless it is an admission. See: In re De Blauwe, 222 USPQ 191, 196; Meitzner v. Mindick, 193 USPQ 17, 22, In re Pearson, 181 USPQ 641, 646, In re Lindner, 173 USPQ 356, 358; In re Schalze, 145 USPQ 716, 718; In re Cole, 140 USPQ 230, 233, and In re Walters, 77 USPQ 609, 610.

The feature of kit claims 11 to 15, 17 to 20 of including (b) information that the use of the (A) acidic beverage provides treatment against dental erosion is not patentable thereover, (In re Haller, 73 USPQ 403, CCPA-1947) since it is predicated on

Art Unit: 1614

printed matter on or "associated with" (advertising in the media) the otherwise old beverage or its package.

Applicant has presented method claims, claims 22 to 31 drawn to the step of orally administering, or drinking a known beverage, to treat dental erosion by its oral administration, and claims 11 to 15 and 17 to 20 and 22 to "KITS" (no more than label information), of such admittedly known species of acidic beverages having a pH of less than 5, which admittedly are considered to directly erode dental enamel, admittedly, according to Lussi et al. (1995), Caries Research Volume 29 pages 349-354; it being admitted prior art that the encompassed species of acidic low pH dental eroding beverages include: fruit juice, as elected, carbonated cola and other soft drinks; as well as tea; milk and milk based beverages; (containing fluoride and calcium, respectively), it being admitted prior art that fluoride and/or calcium excluded from the amended claims can expectedly lessen dental erosion, the improvement to such dental eroding ingestible acid low pH beverages free of calcium and fluoride being that the beverage contains sodium or potassium polyphosphate salts. This is "new use" of a known beverage, another reason to drink it. Is this patentable?

The novelty of kit claims 11 to 15, 17 to 20 and 22, over inadvertently overlooked not admitted above note cited and applied prior art acidic beverages containing the sodium or potassium species of encompassed polyphosphates (included described or taught for reasons other than to treat dental erosion) (cited as known on the PTO-892 attached), (clearly meeting Part (a) of claim 1), is found in Part (b) of "KIT", "INFORMATION THAT THE USE OF THE BEVERAGE COMPOSITION PROVIDING

TREATMENT AGAINST DENTAL EROSION". The CCPA in 1947 in In re Haller, 73 USPQ 403, held that novelty cannot be predicated on printed instructions (or on a label to reconstitute or to dilute a known composition with water to use it as an insecticidal spray). This Court case, never overturned, is binding as a precedent since Federal Circuit precedents are binding on USPTO examiners. The Miller and Gulack decisions can and have been distinguished on their facts, they involve functional elements claimed in Miller, a ratio indicating legend and volumetric indicia on a measuring receptacle in Gulack the printed material was novel and non-obvious both cases are prior to the recent Atlas case.

A review of the applicant cited admitted prior art cited on the PTO-1449 IDS includes:

Lussi et al. (1995) (as noted above) identifying the species of low pH tooth erosive acid beverages encompassed by these claims to include orange juice and other citrus and fruit juices, apple juice, Sprite, Coca cola, Lemon Lime and other carbonated soft drinks, Sweppes, sports drinks, wine and beer, to some of which fluoride had been added to minimize (but not totally prevent) tooth erosion.

Ruessner et al (1975), describe and anticipate the addition, to encompass species of acidic beverages, namely encompassed pH range canned and frozen orange juice, and carbonated lemon lime beverages, of encompassed percentages of phosphates, namely (page 366, column 1, Table I), 0.15% sodium trimetaphosphate; an encompassed polyphosphate species 0.21% monosodium orthophosphate (NaH_2PO_4); with or without 0.08% monofluorophosphate, or 0.15% calcium chloride, the levels of the phosphate compound selected to yield 0.5 mg of phosphorus per ml, and 0.5 mg per ml of calcium. It is presumed that the researchers, being literate, provided labels,

Art Unit: 1614

with information, to guide the trials. A control group had no calcium or polyphosphates in encompassed concentrations, with and without sucrose and/or glucose, as providing anti-carries activity, as tested at 2% phosphate level and high sugar diet (in hamsters) in the absence of fluoride, in Shibata et al.

Examiner cited Muhler (1970) South Africa 6904743, and McDonald et al. (1973), both cited on the PTO-892 teach and describe the feature of adding phosphate ions from a sodium phosphate salt-monosodium dihydrogen phosphate to impart phosphate ion s to acid pH beverages to reduce tooth erosion, same as herein. The feature of selecting sodium or potassium polyphosphates as phosphate ion sources of phosphate ion would be prima facie obvious, if not in fact "immediately envisioned" species under In re Schaumann et al ., 197 USPQ 5.

Shibata et al. (1982), McGaughey et al. (1977) and Harris et al (1967) all, (cited by applicant) each motivates the inclusion in the diet if not into acidic sweetened beverages of or drinking water beverage of encompassed species of these anticaries condensed phosphates of polyphosphates, for an expected anticaries benefit.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

Application/Control Number: 09/489,310
Art Unit: 1614

Page 17

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shep Rose whose telephone number is (703) 308-4609. The examiner can normally be reached on Monday, Tuesday and Thursday from 7:30 AM to 6 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel can be reached on (703) 308-4725. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


SHEP K. ROSE
PRIMARY EXAMINER

Rose/LR
January 6, 2003